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MASTER'S DEGREE THESIS

中国环境法对外商直接投资的调整

**THE REGULATIONS OF CHINESE ENVIRONMENTAL LAW  
ON FOREIGN DIRECT INVESTMENT (FDI)**

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## 摘要

1978 年改革开放政策实行之后，中国出现了一次由跨国公司主导的外国直接投资流入的热潮。在这一时期，海外投资的流入极大缓解了资金短缺。中国从一个几乎被孤立的经济一跃成为发展中国家中最大的外国直接投资流入国。目前，中国的经济增长速度居全世界第三名。自从 2001 年加入 WTO 之后，中国在涉外法规和条例的制定上已逐步融入国际统一标准。

但是，随着外国投资的扩大，在实际应用中，问题已经逐渐涌现。例如，一些跨国公司在技术转让中未能履行中国政府的期望，因此导致了诸如环境保护、资源掠夺和社会矛盾等很多问题。因此，我的研究主要着眼于中国的环境法如何管理由外商直接投资的引入而带来的这些问题。

本文分为四章：第一章介绍在华外国直接投资的背景，分析了中国吸引外商直接投资的原因。第二章重点研究中国环境法有关外国直接投资的法律框架体系，探讨了中国在环境保护法律应用和诉讼方面的一系列发展。第三章分析外商直接投资相关的中国环境保护法的适用问题，以发生在福建的典型的环境污染损害赔偿案件为例子，重点分析了中国环境诉讼相关法律制度。最后，第四章总结了本文的主旨并提出了作者的一些建议。

**关键词：**环境法，外商直接投资，中国

## **Abstract**

After adopted the open door policy in 1978, China experienced a boom of inward FDI by multinational corporations. During this period of reform and opening-up, in particular, the inflows of overseas investment greatly help ease its serious fund shortage. From an almost isolated economy, however, China turned to be the largest recipient of FDI in the developing world. Currently, China became the 3<sup>rd</sup> in the world's leading economic growth next to Japan and the US respectively. Since its entry into the WTO in 2001, China has gradually integrated itself into international practices in terms of foreign-related economic regulations and rules.

However, with the expansion of foreign investment, problems have been gradually emerged in its utilization. For instance, some multinationals fail to fulfil Chinese's expectations in technology transfer resulting in such problems as environmental pollution, plundering of resources and social contradictions etc. My research is, therefore, mainly focusing on how Chinese Environment Law regulates FDI in China.

This paper consists of Four Chapters: In its first Chapter, the paper addresses the Background of FDI in China; it discusses a number of factors that attract FDI to China. Chapter Two emphasizes the Background and Frame work of Chinese Environmental Law on FDI; it discusses a number of developments in the utilization of law and litigation for Environmental Protection in China. Chapter Three examines the Application of Chinese Environmental Law on FDI; it examines more closely the legal framework that allows for Environmental Litigation in China, with a focus on the most prevalent form of Chinese Environmental Litigation-Pollution compensation law suits. This Chapter also highlights the key issues related to this type of litigation from the perspective of major environmental class action lawsuit from Fujian Province. Finally, Chapter Four Concludes the Themes of the dissertation and the Author's Suggestions.

**Author's Key Words:** Environment Law, FDI, China



### **Abbreviations**

|        |   |
|--------|---|
| ACLA   | All-China Lawyers Association                           |
| ACEF   | All-China Environment Federation                        |
| EIA    | The system of Environmental Impact Assessment           |
| EPB    | Environment Protection Bureau                           |
| EIAL   | Environmental Impact Assessment Law                     |
| EIS    | Environment Impact Statement                            |
| EPL    | Environmental Protection Law                            |
| SEPA   | State Environmental Protection Administration           |
| FDI    | Foreign Direct Investment                               |
| WTO    | World Trade Organization                                |
| GDP    | Growth Domestic Product                                 |
| UN     | United Nations  |
| OECD   | Organization for Economic Cooperation & Development     |
| CLAPV  | Centre for Legal Assistance to Pollution Victims        |
| NGOs   | None-Governmental Organizations                         |
| GONGOs | Government Organized None Governmental Organizations    |
| PRC    | People's Republic of China                              |
| HMT    | Hong Kong, Macao, Taiwan                                |
| JVL    | Joint Venture Law                                       |
| RJVL   | Regulations Promulgated under Joint Venture Law         |
| WFOE   | Wholly Foreign Owned Enterprises                        |
| RWFOE  | Regulations for Wholly Foreign Owned Enterprises        |
| CJVL   | Sino-Foreign co-operative Joint Venture Law             |
| RCJV   | Regulations for Sino-Foreign Co-operative Joint Venture |

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厦门大学博硕士论文摘要库

## Introduction

In a rural village, set on the edges of a narrow mountain valley, a group of farmers go to court seeking relief from industrial pollution that has threatened their health and destroyed the crops that are the basis of their livelihoods. The defendants are two local factories that use a primitive industrial process to reduce copper ore. The process generates massive amounts of smoke and stench that decimate much of the surrounding forests and crops and cause local residents chronic headaches and coughing. The farmers ask for compensation and a court order halting the pollution. The court refuses to order a stop to the polluting activities because such an order would "blot out two great mining and manufacturing enterprises, destroy half of the taxable values of the country . . . and deprive thousands of working people of their homes and livelihood."

This particular case is the 1904 United States case of *Madison v. Ducktown Sulphur, Copper & Iron Co.*, which arose out of an environmental dispute in southeastern Tennessee. This story is all too familiar in China, reflecting the persistent distance between environmental degradation and a legal system struggling to keep pace with a rapidly growing economy. As in China today, the industrial revolution in the United States brought with it increasing harm to the public from pollution and greater environmental conflict. In the United States, state and federal governments muddled through decades of inadequate environmental regulation and often unsatisfactory court decisions. It was not until the 1970s that the United States passed a series of

robust environmental laws and opened robust environmental laws and opened the door to a generation of environmental advocates who would use law and the courts to improve the environment.

There is some comfort in knowing that developed countries like the United States, Japan, and England were able to reverse decades of environmental degradation. The difficulty is that China's environmental problems are arguably moving faster and on a larger scale than anything the world has ever seen before.

How can China remedy its environmental problems that emerged due to FDI given the pace and scale of change? In recent years, China has recognized the key role that the legal system must play in addressing ever-worsening environmental problems. For example, the State Council, China's highest executive body, has specifically called for the "perfection of the legal assistance system for pollution victims, and research and establishment of an environmental civil and administrative public interest litigation system." A robust debate has emerged in Chinese government, academic and civil society circles regarding the exact form that such a public interest litigation system might take.

This debate raises questions from the mechanical (e.g., how many days of notice should the government receive before the commencement of a suit?) to the existential (e.g., what is the "public interest?"). More generally, China is moving forward on a broad range of legal approaches to environmental protection, including expansion and standardization of environmental impact assessment procedures, encouragement of information disclosure-based regulation, and the creation of public hearing procedures.

## **Chapter One**

### **The Background of FDI in China**

FDI reflects the objective of obtaining a lasting interest by a resident entity in one economy (“direct investor”) in an entity resident in an economy other than that of the investor (“direct investment enterprise”). The lasting interest implies the existence of a long-term relationship between the direct investor and the enterprise and a significant degree of influence on the management of the enterprise. Direct investment involves both the initial transaction between the two entities and all subsequent capital transactions between them and among affiliated enterprises, both incorporated and unincorporated.<sup>1</sup>

With a view of expanding economic cooperation and technological exchange with foreign countries and promoting the development of China’s national economy, the People’s Republic of China permits foreign enterprises, other foreign economic organizations and individuals (hereinafter collectively referred to as “foreign investors”) to set up enterprises with foreign capital in China.<sup>2</sup> The P.R.C does not only permit but also protects the lawful rights and interests of such enterprises.<sup>3</sup>

Formally, China opened its door to FDI with the passage of the “Law of the People’s Republic of China on Joint Ventures using Chinese and Foreign Investment” in 1979. Later Special Economic Zones (Shenzhen, Zhuhai, -

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<sup>1</sup><http://www.oecd.org...>

<sup>2</sup>Art.1 of the People’s Republic of China Law on Chinese-Foreign Contractual Joint Ventures, adopted on April 13, 1988 and amended on 31<sup>st</sup> Oct. 2000

<sup>3</sup>Art.2 of the People’s Republic of China Law on Chinese-Foreign Contractual Joint Ventures, adopted on April 13, 1988 and amended on 31<sup>st</sup> Oct. 2000

Shantou, and Xiamen) were founded by the central government under Deng Xiaoping in the early 1980s, offering preferential treatment to joint ventures.<sup>4</sup> In subsequent years, steps were taken to further improve foreign investment climate. These included the extending preferential treatment to foreign investment in 14 coastal cities and Hainan Island, the establishment of a limited foreign currency market, and the eventual acceptance of wholly foreign-owned enterprises in China. This last development came in accordance with the “Law of the People’s Republic of China on Enterprises Operated Exclusively with Foreign-Capital” in 1986.<sup>5</sup>

The flow of foreign investment into China was slow at the beginning of reform due to difficulties in accessing the Chinese market, the non-convertibility of the Chinese currency, and the lack of precedence combined to deter foreigners from investing in China. Uncertain property rights were coupled for fear of policy reversal on the part of the Chinese government.

Despite the above difficulties, China became the largest recipient of FDI in the world; in 2004, she surpassed the USA as host destination. It has consequently attracted an increasing attention from multinational businesses. Since China adopted the reform and opening-up policy in the late 1970s, foreign investment has played an increasingly important role in its economic growth.<sup>6</sup> According to the World Investment Report for 2004 by the United Nations Conference on Trade and Development, China absorbed a total of \$53.5 billion worth of FDI in 2003.<sup>7</sup> China's top economic planning agency, reported that foreign investment in 2004 rose to \$60 billion, a 13 per cent -

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<sup>4</sup>[http://en.wikipedia.org/wiki/Special\\_Economic\\_Zone](http://en.wikipedia.org/wiki/Special_Economic_Zone).

<sup>5</sup>Art.3 of the People’s Republic of China Law on Foreign-Capital Enterprises, 1986

<sup>6</sup>Wei, Shang Jin. 1995. "The Open Door Policy and the China's Rapid Growth

<sup>7</sup>World Investment Report by United Nations Conference on Trade and Development, 2004



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